

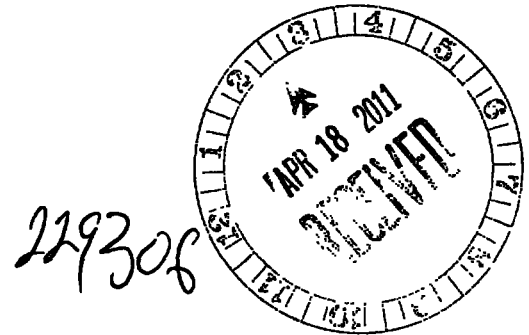
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April 18, 2011

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001



RE: Finance Docket No. 35495, *CSX Transportation, Inc.—Lease Exemption—*
Consolidated Rail Corporation

EXPEDITED HANDLING REQUESTED

Dear Ms. Brown:

Enclosed for filing are the original and ten copies of a Petition for Exemption under 49 C.F.R. § 1121, a diskette with the file Petition in pdf and Word format, and checks covering the \$6,600.00 filing fee for the Petition.

Please time and date stamp the extra copy of this letter and the Petition and return them with our messenger.

If you have any questions, please contact me.

Sincerely yours,

Louis E. Gitomer
Attorney for CSX Transportation, Inc.

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APR 18 2011

SURFACE

Enclosures **TRANSPORTATION BOARD**

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Office of Proceedings

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Public Record

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SURFACE
TRANSPORTATION BOARD



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35495

CSX TRANSPORTATION, INC.— LEASE EXEMPTION—
CONSOLIDATED RAIL CORPORATION

PETITION FOR EXEMPTION

EXPEDITED HANDLING REQUESTED

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INC.

Dated: April 18, 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35495

CSX TRANSPORTATION, INC.— LEASE EXEMPTION—
CONSOLIDATED RAIL CORPORATION

PETITION FOR EXEMPTION

CSX Transportation, Inc. (“CSXT”), petitions the Surface Transportation Board (the “Board”), under 49 U.S.C. § 10502 and 49 CFR Part 1121, for an exemption from 49 U.S.C. §§ 11323-11325 for CSXT to lease from Consolidated Rail Corporation (“Conrail”) an approximately 1,303 foot line segment in the Philadelphia/South New Jersey Shared Asset Area, known as the Engelside Connection, between milepost 5.20 and milepost 5.45, in Philadelphia, PA (the “Line”) (the proposed transaction is referred to as the “Lease”). A map of the Line is in Exhibit A.

BACKGROUND

CSXT and Conrail have agreed to CSXT’s lease of the Line from Conrail. The Lease will enhance CSXT’s operational efficiencies between south Philadelphia and New Jersey. The Line is currently used by Conrail, Norfolk Southern Railway Company (“NS”), and to a minimal extent CSXT. CSXT uses the Line to connect between CSXT’s Trenton Line and the Amtrak owned, Conrail operated Delair Branch within CP Park in Philadelphia. Conrail and NS will continue to use the Line as they do today after it is leased by CSXT.

The existing ownership of the trackage at CP Park was approved in *CSX Corp. et al.—Control—Conrail, Inc. et al.*, 3 S.T.B. 196, 351-352, 392 (1998).

Currently, CSXT's Trenton Subdivision Line and the Line join at a single turnout in CP Park. The existing configuration of the tracks does not allow CSXT to make efficient use of the Line to connect the Trenton Line and the Delair Branch. In order to fully utilize the Line efficiently to connect the Trenton Line and Delair Branch, CSXT will construct an additional connection between the Trenton Subdivision Line and the Line at CP Park. The project will create a full wye configuration between CSXT and Conrail with two legs of the wye owned by CSXT (the existing CSXT track and the to-be-constructed new connection) and one leg of the wye being the current Conrail track. The construction of the new connection is on property owned by CSXT and Conrail. The Portion of the turnout into the Conrail track will be on existing Conrail right-of-way, with the rest in CSXT's right-of-way.

The new track will be constructed and owned by CSXT, however, the new connection turnout into the Conrail track and some signaling will be on Conrail property. To facilitate the reconfigured connection CSXT has agreed to lease the Line, which will be part of the reconfigured connection. The parties have agreed that CSXT will operate and maintain the new configuration, which will simplify control, maintenance, and operation of the area.

The additional track to be constructed by CSXT will not allow CSXT to serve any new shippers or invade a new territory. It is merely to enhance the efficiency of an existing operation without disrupting operations over the Line by Conrail or NS and without any competitive effect.

JURISDICTION

The “[p]urchase, lease, or contract to operate property of another rail carrier by any number of rail carriers” may be carried out only with the approval and authorization of the Board.

49 U.S.C. §11323(a)(2). CSXT is leasing the Line from Conrail. Since CSXT and Conrail are both rail carriers, the Lease falls within the jurisdiction of the Board under 49 U.S.C. §11323(a)(2).

ARGUMENT

A. THE LEASE SHOULD BE EXEMPTED FROM THE PRIOR APPROVAL REQUIREMENTS OF 49 U.S.C. §§ 11323-25.

The lease of an approximately 1,303 foot line segment by CSXT from Conrail is subject to prior review and authorization by the Board pursuant to 49 U.S.C. § 11323(a)(2).

Pursuant to 49 U.S.C. § 10502, however, the Board must exempt a transaction from regulation when it finds that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either: (a) the transaction is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the Board's predecessor to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). *See also Exemption From Regulation—Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984) (the “*Boxcar Exemption*”). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

In reviewing an exemption petition under Section 10502, the Board does not undertake a broader analysis than it would apply to a transaction under the statutory provision applicable in the absence of the exemption. *See Blackstone Capital Partners -- Cont. Exemp. -- Chicago & N.W. Trans. Co.*, ICC Finance Docket No. 31493 (ICC served July 5, 1989), slip op. at 2; *Village of Palestine v. I.C.C.*, 936 F. 2d 1335 (D.C. Cir. 1991).

The Lease does not involve the merger or control of at least two Class I rail carriers. There is no merger or control and Conrail is a Class II rail carrier. Therefore, absent an exemption, the Lease would be subject to Board review under the standards set forth in 49 U.S.C. § 11324(d). Section 11324(d) provides that the Board “shall approve” the transaction unless it finds both that:

- (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and
- (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

49 U.S.C. § 11324(d).

In transactions subject to Section 11324(d), the primary focus is on the probable competitive effects of the proposed transaction. *See, e.g., Norfolk Southern Railway Company*,

Pan Am Railways, Inc. et al. –Joint Control and Operating/Pooling Agreements—Pan Am Southern LLC, STB Finance Docket No. 35147 (STB served March 10, 2009) at 4-5; *Canadian National, et al.—Control—Wisconsin Central Transp. Corp. et al.*, 5 S.T.B. 890, 899 (2001), and *Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc.*, 6 I.C.C. 2d 799, 803 (1990), *pet. for review denied sub nom. Railway Labor Executives’ Ass’n v. ICC*, 930 F.2d 511 (6th Cir. 1991). The public interest factors are considered only where significant anticompetitive effects are found. *Id.* Even though there are no significant anticompetitive affects that will result from the Lease, there will be public interest benefits from more efficient operations.

A finding of competitive harm under Section 11324(d)(1) must be grounded on a showing that any adverse competitive effects are both “likely” and “substantial.” *Wisc. Central Transportation Corporation, Et Al.*, 9 I.C.C.2d 233, 238 (1992). Examples of adverse competitive impacts that would trigger the balancing of the public interest factors under Section 11324(d)(2) “would be the likelihood of significantly higher rates or significantly worsened service, or the likelihood of a combination of the two.” *Blackstone Cap. Partners—Cont. Exempt.—CNW Corp. Et Al.*, 5 I.C.C.2d 1015, 1019 (1989). The Lease will not lead to higher rates or worsened service. The Lease will allow CSXT to control operation and maintenance of the Line, the new connection, and new signals, making the flow of traffic more efficient. NS and Conrail operations over the Line will continue as they do today. The Lease will have no adverse horizontal effects on competition and will not result in any vertical foreclosure of competition in the transportation corridors served by the individual carriers. Service options available to shippers will not be diminished. There are no interline routes to close or existing divisions with connecting carriers to cancel. The Lease will have no adverse impact on competition.

Since the Lease meets the criteria of Section 11324(d), it also meets the criteria of Section 10502, as discussed below.

1. The Application of 49 U.S.C. § 11323(a)(2) Is Not Necessary To Carry Out The Rail Transportation Policy.

Detailed scrutiny of the Lease is not necessary to carry out the rail transportation policy. As previously noted, absent an exemption, the primary substantive issue the Board would need to address is the effect of the Lease on competition. Consequently, the provisions of the rail transportation policy most relevant in this exemption proceeding are 49 U.S.C. § 10101(4) and (5), which encourage the preservation of effective competition. That objective is fully satisfied by the Lease.

The requested exemption will foster other objectives of the Rail Transportation Policy. The Lease will foster the development and continuation of a sound rail transportation system. *See* 49 U.S.C. § 10101 (4). The Lease will not result in any change in operations.

Granting the requested exemption would also minimize Federal regulatory control over the rail transportation system and promote the deregulatory objectives of the Staggers Act and the ICCTA Act. This exemption proceeding provides the Board with all the information necessary to evaluate the proposed transaction, and will minimize regulatory delay and expedite decision making. *See Chicago West Pullman Corp.—Control Exemption—Chicago Rail Link*, ICC Finance Docket No. 31390 (ICC served February 24, 1989); *Itel Rail Corp.—Continuance in Control Exemption—FRVR Corp.*, ICC Finance Docket No. 31206 (ICC served February 5, 1988). While regulatory delay would be minimized, the interests of shippers, employees and the general public are fully protected.

Requiring the filing of an application would serve no useful purpose in this proceeding. As the information in this Petition demonstrates, the Lease readily satisfies the requirements of Section 11324(d), which, absent the granting of the exemption, would govern the Lease. As previously noted, under Section 11324(d), the Board must approve a proposed transaction unless it finds there is likely to be a substantial lessening of competition and the anticompetitive effects outweigh the public benefits. The Lease will not result in any, much less in a substantial, lessening of competition. Consequently, if the Lease were brought before the Board in a full application proceeding, the Board would be required to approve the Lease.

Other aspects of the rail transportation policy are not adversely affected.

2. The Lease Will Not Result In An Abuse of Market Power

It follows from the conclusion that there will be no competitive harm as the result of the Lease that the Lease will not subject shippers to an abuse of market power. In fact, the Lease will benefit shippers by allowing CSXT and Conrail to reconfigure their connection at CP Park to move traffic more efficiently.

3. The Proposed Transaction Is Of Limited Scope

Because regulation is not needed to protect shippers from abuse of market power, the Board need not address whether the Lease is of limited scope. See *Illinois Commerce Commission v. ICC*, 819 F.2d 311, 314 (D.C. Cir. 1987). It is noteworthy, however, that the Lease is less extensive than many others that have been exempted by the Board's predecessor. See, e.g., *Blackstone-CNW; Montana Rail Link—Exemption, Acquisition and Operation—Certain Lines of Burlington Northern Railroad*, ICC Finance Docket No. 31089 (ICC served May 26, 1988); *Wisconsin Central Ltd.—Exemption, Acquisition and Operation—Certain Lines of Soo Line Railroad*, ICC Finance Docket No. 31102 (ICC served July 28, 1988).

The Lease involves an approximately 1,303 foot line segment in one yard.

LABOR

Any employees affected by the Lease will be entitled to labor protection in accordance with *Mendocino Coast Ry., Inc. –Lease and Operate*, 360 I.C.C. 653 (1980).

ENVIRONMENTAL AND HISTORIC

CSXT is leasing an approximately 1,303 foot line segment from Conrail, which does not require the filing of a Safety Integration Plan, an Environmental Assessment, or a Historic Report.

The Lease is not the type of transaction that requires the filing of a Safety Integration Plan. 49 CFR §1106.2 and .3. A Safety Integration Plan is required to be filed by “a Class I railroad proposing to merge, consolidate, or acquire another Class I railroad, or a Class II railroad with which it proposes to amalgamate operations.” *Regulations on Safety Integration Plans*, 6 S.T.B 129, 146 (2002). CSXT is leasing a very short line segment from Conrail that will allow traffic to flow better between CP Park and New Jersey and there will be no amalgamation of operations. Therefore, CSXT contends that a Safety Integration Plan is not required to be filed.

Neither environmental documentation nor a Historic Report is required under the exception in 49 CFR § 1105.6(c)(2). There will be no operational changes that exceed the thresholds of 49 CFR § 1105.7(e)(4) or (5).

The Lease will not cause diversions from rail to motor carriage of more than: (A) 1,000 rail carloads a year; or (B) an average of 50 rail carloads per mile per year for any part of the affected lines. The Line is located in a class I or nonattainment area under the Clean Air Act. However, the Lease will not result in either: (A) an increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment

of rail line, (B) an increase in rail yard activity of at least 20 percent (measured by carload activity), or (C) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment. The transportation of ozone depleting materials (such as nitrogen oxide and freon) is not contemplated. *See* 49 CFR § 1105.7(e)(4) and (5).

CSXT does not intend to substantially change the level of maintenance of the railroad properties. *See* 49 CFR § 1105.8(b)(3).

The Lease does not meet the thresholds established in 49 CFR § 1105.7(e)(4) and (5), and 49 CFR § 1105.8(b)(1). Therefore, it is not necessary for CSXT to submit a Safety Integration Plan, an Environmental Report, or a Historic Report as part of this Petition for Exemption.

This action will not significantly affect either the quality of the human environment or energy conservation.

EXPEDITED HANDLING REQUESTED

Construction season has arrived in the northeast. CSXT would like to begin construction of the wye track under the Lease as soon as possible so that the more efficient route can be used. Moreover, CSXT does not expect any opposition to the Lease. The Lease will not harm competition and will enhance efficient operations in the Philadelphia area. Therefore, CSXT respectfully requests the Board to grant the proposed exemption expeditiously.

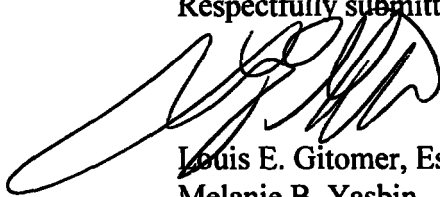
CONCLUSION

CSXT has demonstrated in this Petition that the Lease will not result in any competitive harm. The Lease fosters the transportation policy, will not result in the abuse of market power, and is of limited scope.

PRAYER FOR RELIEF

For the reasons provided herein, CSXT prays that the Board grant this Petition for Exemption.

Respectfully submitted,



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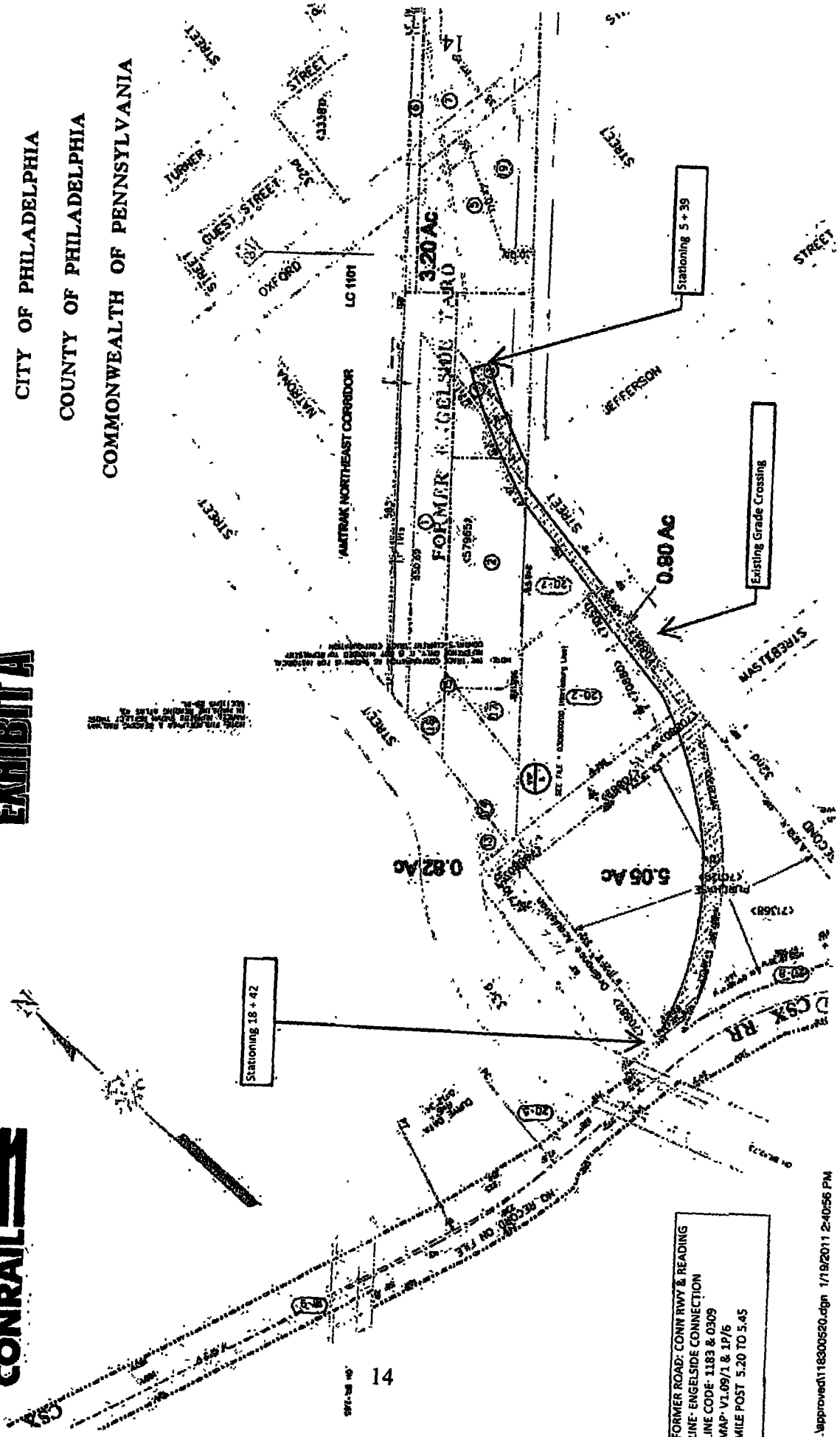
Dated: April 18, 2011

EXHIBIT A-MAP



EXHIBIT A

CITY OF PHILADELPHIA
COUNTY OF PHILADELPHIA
COMMONWEALTH OF PENNSYLVANIA



FORMER ROAD: CONN RWT & READING
LINE: ENGLESIDE CONNECTION
LINE CODE: 1183 & 0309
MAP: V1.09/1 & 1P/6
MILE POST 5.20 TO 5.45